IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4254 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R.P.SATI

Versus

M.L.RANA

Appearance:

1. Criminal Misc.Application No. 4254 of 1995

MR SAVJANI for MR RAJNI H MEHTA for Petitioner No. 1-5

MR BS PATEL for Respondent No. 1

MRS RANJAN B PATEL for Respondent No. 1

MR HM PRACHCHAK A.P.P. for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 20/11/2003

ORAL JUDGEMENT

Heard Mr.Savjani for Mr.R.H. Mehta learned advocate appearing for the applicants, Mr.B.S. Patel learned advocate for respondent no.1 and Mr.H.M. Prachchhak learned A.P.P. for respondent no.2 - State.

2. This application has been filed under Section 482 of the Code of Criminal Procedure, 1973 by the original accused of Inquiry Criminal Case No. 90 of 1995, pending on the file of the learned Judicial Magistrate, First Class, Ankleshwar. Accused nos. 1 to 5 are the Officers of Oil and Natural Gas Commission and accused no.6 is the owner of Medical store. It appears from the complaint, which has been lodged by the ex-employee of the Oil and Natural Gas Commission, for the alleged commission of offences by the present applicants under Sections 193, 196, 427 read with 114 of the Indian Penal Code. The same has been filed on the ground that since, applicants nos.1 and 2 were non Gujaratis they were out to harass the complainant and for that reason they had cooked up a case against him for a departmental inquiry. It also appears that inquiry was held against respondent no.2. i.e. original complainant for committing some irregularities/mischief in obtaining loan in the month of April, 1987 from the Oil and Natural Gas Commission, Ankleshwar project, for purchasing car. It is the case of the complainant that the officers of the Oil and Natural Gas Commission namely applicants nos. 1 to 5 with the active help of the applicant no.6 i.e. the seller of the car, fabricated the documents with a view to falsely implicate the complainant in a case for departmental inquiry and in fact they used the documents against the complainant, in evidence, on the strength of which the complainant was held guilty of committing the misconduct alleged against him.

2.1. On 10th July, 1993, he was retired compulsorily from the service. His say is that by virtue of this compulsory retirement much before the date of his superannuation, he had suffered loss of Rs.4,75,000=00. The complaint was filed on 19th September, 1995 and the learned Magistrate, on the same day passed an order for investigation under Section 156 (3) of the Code of Criminal Procedure, 1973 for the offences made punishable under Sections 193, 196, 427 and 114 of the Indian Penal Code. It is this order which is challenged before this Court under Section 482 of the Code of Criminal Procedure.

3. Mr.Savjani for Mr.R.H. Mehta learned advocate appearing for the applicants has submitted that this is a glaring incident of abuse of process of law in as much as

the complainant has tried to falsely implicate the applicants in a criminal case on account of order of compulsory retirement passed against him in the inquiry held into his misconduct. According to him, this was done with a view to create ground which may help the complainant in challenging the order of compulsory retirement before the higher forum.

3.1. Mr.B.S. Patel learned advocate appearing for respondent no.1 has on the contrary supported the order of the learned Magistrate and has submitted that at this stage when the investigation is ordered into the matter, there is no need to invoke powers under the provisions of Section 482 of the Code of Criminal Procedure by this Court.

4. Having carefully considered the record of the application and in particular the contents of the complaint and the submissions of both the learned counsels, it clearly appears that the complainant has filed this complaint after the order of compulsory retirement which was passed against him in departmental inquiry, wherein he was accused of obtaining loan on fabricated documents. If the contents of the complaint are closely perused and even if they are taken to be true, they do not disclose any offence committed by the applicants much less offences which are made punishable under the provisions of Sections 193, 196, 427 and 114 of the Indian Penal Code. This is nothing but abuse of process of law and such action on the part of the complainant is required to be curbed even at the stage of investigation. This application is, therefore, allowed. The proceedings of inquiry Criminal Case No.90 of 1995 pending on the file of the Ld. Judicial Magistrate First Class, Ankleshwar is ordered to be quashed. Rule is made absolute.

[AKSHAY H. MEHTA, J.]

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